TO: Catherine Harrison

Department for Aging and Rehabilitative Services

FROM: Heidi Lawyer

RE: LTESS and EES Workgroup Proposed Recommendations

DATE: September 14, 2018

*The Virginia Board for People with Disabilities (The Board) appreciates this opportunity to comment on the proposed recommendations from the LTESS and EES Workgroup to the Chairmen of the House Appropriations and Senate Finance Committees. The Board is the Developmental Disabilities Council for the State of Virginia, and is comprised of 39 members, 60 percent of which consist of people with developmental disabilities and the family members of people with developmental disabilities. Central to the Board’s mission is the core belief that people with developmental disabilities are capable of living meaningful, productive, self-directed lives in communities of their choosing. The Board believes that people with developmental disabilities should have the same choices, the same rights, and the same legal protections as people without disabilities.*

*The LTESS and EES Workgroup was convened pursuant to Budget Item 329P of the FY 2019-2020 Biennium Budget, which specifies the purpose of the workgroup as follows:*

*The purpose of the workgroup is to assess combining the Extended Employment Services (EES) and Long Term Employment Support Services (LTESS) programs and associated funding into one program.*

*The Board notes at the outset that some of the recommendations under consideration by the workgroup go further than this limited charge to focus on structural changes beyond the question of whether they should be combined into a single program.* The Board has no position on whether the LTESS and EES programs should be combined into a single program or not; but the Board strongly believes that any structural changes to these programs should allow sufficient flexibility in the use of program funds to adapt to shifting needs and state priorities.

Legislative changes to the LTESS and EES programs were just recently enacted during the 2018 legislative session. DARS is working to bring on new employment services vendors, and will be operationalizing a new EES allocation methodology beginning in FY 2019. These changes are unfolding in the midst of significant social and regulatory changes that affect the present and future demand for, and direction of employment services for people with disabilities in the Commonwealth*.* Any discussion about the potential reorganization of the LTESS and EES programs must occur within the context of these broader trends and developments in the Commonwealth’s employment services system.

As the members of the workgroup are no doubt aware, Virginia’s historical overreliance on sheltered employment options for people with developmental disabilities was noted in the U.S. Department of Justice’s (DOJ’s) 2011 Letter of Findings.[[1]](#footnote-1) Subsequently, the Commonwealth entered into a settlement agreement with the DOJ, which requires, among other things, that the Commonwealth establish an Employment First policy for individuals with developmental disabilities, which must be based on the following principles:

(1) individual supported employment in integrated work settings is the first and priority service option for individuals with intellectual or developmental disabilities receiving day program or employment services from or funded by the commonwealth;

***(2) the goal of employment services is to support individuals in integrated work settings where they are paid minimum or competitive wages;***

(3) employment services and goals must be developed and discussed at least annually through a person-centered planning process and included in ISPs.[[2]](#footnote-2)

Any state actions that seek to perpetuate Virginia’s reliance on sheltered employment options for individuals with developmental disabilities are inconsistent with the Employment First policy adopted by the Commonwealth pursuant to its DOJ Settlement Agreement. They are also at odds with other legal, regulatory, and societal trends, which are decidedly shifting in the direction of integrated competitive employment as the only desirable employment outcome for people with developmental disabilities. The Workforce Innovation and Opportunity Act (WIOA), passed in 2014, placed new restrictions on the ability of states to place individuals with disabilities in sheltered workshop settings. It also prioritizes placement in competitive integrated employment that is compensated at or above minimum wage for people with disabilities. Noncompetitive and segregated employment options are no longer employment outcomes recognized under federal law, and Vocational Rehabilitation programs cannot use federal resources to support these outcomes.The Board is concerned that Recommendation 2 under consideration by the Workgroup, which would require DARS to develop a “standardized referral process for individuals who make the informed choice to not pursue competitive integrated employment” to be referred to sheltered workshop settings, would implicate DARS in the support of programs that are antithetical to DARS’s mission, and potentially cause DARS to violate its obligations under WIOA to focus its federal funding on competitive integrated employment.

The Board published an Assessment of Virginia’s employment services system for people with disabilities in 2017. In that Assessment, the Board made the following recommendation: *Decrease the reliance on sheltered employment and increase competitive integrated employment opportunities for people with disabilities in the Commonwealth.* The Board continues to believe that state funded employment supports should focus on expanding opportunities for individuals to obtain integrated, competitive employment, and that state funded sheltered employment and subminimum wages for individuals with disabilities should be phased out. The state’s continued support for sheltered employment and subminimum wages for people with disabilities is inconsistent with recent legal and societal trends, as well as with the Commonwealth’s obligations under the DOJ Settlement Agreement. ***For this reason, to the extent that the workgroup considers structural changes to the LTESS and EES programs, the Board recommends that the workgroup consider a recommendation that would begin the process of transforming the LTESS and EES programs into programs that expand opportunities for individuals with disabilities to obtain competitive integrated employment, rather than programs that perpetuate a system that relies on the segregation of individuals with disabilities and subminimum wages.***

1. DOJ Letter of Findings, Feb 10, 2011, p 17, fn 18, *explaining that* “[Virginia] appears to be overly reliant on segregated sheltered workshops and day programs that offer little opportunity for real community integration, even though the State also offers more integrated supported employment opportunities.” [↑](#footnote-ref-1)
2. DOJ Settlement Agreement, Aug 23, 2012, p. 11 (bold and italics added). [↑](#footnote-ref-2)